

The Honorable Tana Lin
United States District Court Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KURT A. BENSHOOF, BRIANA D. GAGE, and)
UVRE MAGGITI)

Plaintiffs,)

v.)

CITY OF SHORELINE, KING COUNTY,)
TOWN & COUNTRY MARKETS, EVAN B.)
FAGAN, WILLIAM C. AKERS, MR.)
THOMPSON, JAMPA TSETEN, NICHOLAS)
W. DEMUSE, COURTNEY J. OLSON, ADAM)
R. AHSER and ANN M. SUMMERS)

Defendants.)

No. 2:24-cv-00343-TL

DEFENDANTS' REPLY IN
SUPPORT OF MOTION TO DISMISS
PURSUANT TO FED. R. CIV. P. 12b

Noted for March 7, 2025

I. REPLY

A. Plaintiffs Gage and Maggitti have not opposed the defendants' motion to dismiss.

Plaintiffs Briana Gage and Urve Maggitti have failed to oppose the defendants' motion to dismiss (Dkt. 94). Only Plaintiff Benshoof filed an opposition at Dkt. 99, which contains only Benshoof's signature. Pursuant to LCR 7(b)(2), a failure to oppose a motion may be considered by the Court as an admission that the motion has merits.

For the reasons stated in the defendants' motion to dismiss (Dkt. 94), which are unopposed, this Court should dismiss Plaintiffs Brianna Gage and Urve Maggitti's claims with prejudice.

1 **B. This Court should take judicial notice that Plaintiff Benshoof has been declared a**
 2 **vexatious litigant in Federal Court by Judge Whitehead in case 2:23-cv-1392 (Dkt.**
 3 **264).**

4 The City of Shoreline, King County, Deputies William Akers and Nicholas DeMuse, and
 5 Detectives Paul Thompson and Jampa Tseten, and Senior Deputy Prosecuting Attorney Ann
 6 Summers (hereinafter Government Defendants) respectfully ask this Court take judicial notice of
 7 the Order Declaring Plaintiff Benshoof a Vexatious Litigant, issued by the Honorable Judge
 8 Whitehead in case 2:23-cv-1392 (Dkt. 264). Fed. R. Evid. 201.

9 In that Order, Judge Whitehead noted that “Benshoof stands out as a particularly difficult
 10 litigant, not only because of his prolific filings but also because of his abusive litigation tactics”
 11 (case 2:23-cv-1392, Dkt. 264, 13:14-15). And that “[h]e also routinely sues the judges presiding
 12 over his cases, if displeased by the outcome of a case or ruling ... [and] [s]imilarly, he often sues
 13 any lawyer on the opposing side of his cases” (*Id.* 14:4-5;8-10), and that one of Benshoof’s most
 14 disruptive tactics has been the length of his filings (*Id.* 16:16-17).

15 **C. Plaintiff Benshoof’s opposition shows his pattern of vexatious litigation on**
 16 **meritless claims.**

17 Plaintiff’s unfortunate personal attacks require no response, but he shows his pattern on
 18 vexatious litigation. None of the plaintiffs’ statements in his response could change his failure to
 19 state a cognizable claim in his Amended Complaint.

20 Mr. Benshoof attempts to claim that he has presented “irrefutable evidence” against the
 21 State Court Order Restricting Abusive Litigation and that King County is not one of the “covered
 22 parties” (Dkt. 99 at 9). The King County Superior Court Order Restricting Abusive Litigation and
 23 the Order finding Mr. Benshoof in contempt (see Dkt, 95, decl. Viola Villanueva, Exhibits B and
 D) were both affirmed by the Court of Appeals, see *Benshoof v. Cliber*, 32 Wn. App. 2d 1011,
 2024 WL 3936917, at *6 (2024), and *Benshoof v. Cliber*, 86466-1-I, 2025 WL 252817, at *3

1 (Wash. Ct. App. Jan. 21, 2025). Mr. Benshoof's disagreement with the terms of the order does not
2 properly explain why he failed to submit a copy of such an order in this lawsuit, which was one of
3 the terms imposed.

4 Plaintiff Benshoof has failed to adequately address why adding the addition of new claims
5 with unrelated defendants, such as the addition of Senior Deputy Prosecutor Attorney Ann
6 Summers, would be a proper amendment under Fed. R. Civ. P. 15. The new claims against the
7 case's attorneys, which have been identified as one of the plaintiff's vexatious litigation tactics
8 (case 2:23-cv-1392, Dkt. 264), do not pass the commonality and same transaction standard under
9 the rule. More importantly, the amendment process should not be allowed to circumvent the terms
10 of Judge Whitehead's order declaring Mr. Benshoof a vexatious litigant. *Id.*

11 Plaintiff Benshoof failed to address why this Court should exercise supplemental
12 jurisdiction on the State claims, which the Court has declined to do so previously (See Dkt. 85).
13 In addition, instead of responding to the defendants' motion to dismiss, Mr. Benshoof appears to
14 argue the claims are interchangeable, seemingly to argue on behalf of Plaintiff Gage, when she has
15 not opposed the motion to dismiss and has not signed the responding brief either. The negligence
16 claim fails because Plaintiff does not specify what actions were attributed to each Defendant, nor
17 does he specify even the date of the alleged violation.

18 Plaintiff Benshoof failed to state a cognizable *Monell* claim and produce substantive
19 arguments. Mere legal conclusions in a complaint are not entitled to an assumption of truth.
20 *Ashcroft v Iqbal*, 556 U.S. 662, 678-79 (2009). While this Court must accept a complaint's well-
21 pled facts, conclusory allegations of law and unwarranted inferences will not defeat a motion to
22 dismiss. *Vasquez v. Los Angeles County*, 487 F.3d 1246, 1249 (9th Cir. 2007). "[A] plaintiff's
23 obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and

1 conclusions, and a formulaic recitation of the elements of a cause of action will not do.... Factual
2 allegations must be enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp.*
3 *v. Twombly*, 550 U.S. 544, 555 (2007).

4 Plaintiff Benshoof failed to address the deficiencies in his religious discrimination claim
5 substantively and instead engaged in hypotheticals that exemplified his vexatious litigation tactics
6 (See Dkt. 99, p22 ¶72). Plaintiff’s arguments do not address the issues with the claim, which
7 remain his failure to identify any First Amendment violation. Enforcement of a masking policy in
8 a grocery store does not implicate the free exercise of religion. “A person asserting a free exercise
9 claim must show that the government action in question substantially burdens the person’s practice
10 of her religion.” *Jones v. Williams*, 791 F.3d 1023, 1031 (9th Cir. 2015). “A substantial
11 burden...place[s] more than an inconvenience on religious exercise; it must have a tendency to
12 coerce individuals into acting contrary to their religious beliefs or exert substantial pressure on an
13 adherent to modify his behavior and to violate his beliefs.” *Id.* at 1031-32 (internal quotation marks
14 and punctuation omitted). See also *Denis v. Ige*, 538 F.Supp.3d 1063, 1076 (D. Haw. 2021)
15 (denying free exercise challenge to mask mandates). Benshoof does not identify how or why the
16 tenets of his religion proscribe masks, and he fails to describe how T&C’s mask policy placed a
17 substantial burden on the exercise of that religion. And Plaintiff still has not addressed why the
18 alternative of wearing a face shield in lieu of the face mask would place a substantive burden on
19 the exercise of his religion. *Gardner v. Brown*, No. C21-1256, 2023 WL 11022871, at *5 (D. Or.
20 Nov. 3, 2023) (“Neither does [Plaintiff] identify the tenets of his religion, allege that his sincerely
21 held religious beliefs reject the use of face masks, nor describe how the mask mandate substantially
22 burdens the practice of his religion.”).

1 Plaintiff Benshoof failed to make more than conclusory allegations regarding his
 2 “conspiracy” claim. His response appears to track with his amended complaint, which also tracked
 3 with his original complaint that was dismissed. Mr. Benshoof’s allegations remain conclusory, and
 4 this Court has previously dismissed these claims (See Dkt. 85). Mr. Benshoof has failed to cure
 5 his deficiencies.

6 Plaintiff Benshoof’s argument regarding his ADA claims should be denied. Mr. Benshoof
 7 litigated similar ADA claims in case 2:23-cv-01392 (*see* Order in Dkt. 245 at 36-39), and the Ninth
 8 Circuit has recently affirmed the dismissal of such claims (*see* case 2:23-cv-01392, Dkt 265, case
 9 24-4223 9 Cir). Here, the only accommodation that Mr. Benshoof requested was not wearing a
 10 mask during the pandemic. Mr. Benshoof failed to show why such accommodation was the only
 11 “reasonable modification,” failed to identify his disability, and failed to show that the alleged
 12 disability would have prevented him from wearing a mask or a face shield (offered as an alternative
 13 by the Store).

14 Benshoof alleges ADA Title III claims against King County, the City of Shoreline, William
 15 Akers, Paul Thompson, and Jampa Tseten (Dkt. 88 at ¶234). He does not, however, allege that
 16 they are “private entit[ies] that ow[n], leas[e], or operat[e] a place of public accommodation,” as
 17 required to state a claim under this section of the ADA. They are government actors; therefore, he
 18 cannot state an ADA claim against them under Title III.

19 II. CONCLUSION

20 King County Defendants respectfully request that this case be dismissed with prejudice,
 21 and that no further leave to amend be granted.

22 *I certify that this Memorandum contains 1,326 words in compliance with Local Civil Rules.*
 23

1 DATED this 5th day of March, 2025.

2 LEESA MANION (she/her)
3 King County Prosecuting Attorney

4 By: /s/ Santiago Voila Villanueva
5 SANTIAGO VIOLA VILLANUEVA, WSBA #54071
6 Senior Deputy Prosecuting Attorney
7 Attorney for City of Shoreline and King County
8 Defendants
9 701 5th Avenue, Suite 600
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11 Phone: (206) 477-1120/Fax: (206) 296-0191
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13 **CERTIFICATE OF FILING AND SERVICE**

14 I hereby certify that on March 5, 2025, I electronically filed the foregoing document with
15 the Clerk of the Court using the CM/ECF E-filing system which will send automatic notification
16 to all the registered parties. I also hereby certify that on March 6, 2025, I sent the same
17 electronically and via US Postal Service to the following:

18 Uvre Maggitti
19 244 Blackburn Drive
20 Berwyn, PA 19312
21 Uvre.maggitti@gmail.com
22 *Pro Se Plaintiff*

23 I declare under penalty of perjury under the laws of the United States of America and the
State of Washington that the foregoing is true and correct.

DATED this 5th day of March, 2025.

24 
25 RAFAEL A. MUNOZ-CINTRON
26 Paralegal I – Litigation Section
27 King County Prosecuting Attorney's Office